

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NICHOLAS LINKO,

Plaintiff,

v.

CAPITAL ONE FINANCIAL
CORPORATION and CAPITAL ONE
BANK (USA), N.A.,

Defendants.

Civil Action No. 3:11-cv-02021-ARC

A. Richard Caputo
United States District Judge

DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Defendants Capital One Bank (USA), N.A. and Capital One Financial Corporation (collectively, "Capital One") respectfully move this Court to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for the reasons set forth in the accompanying brief, which is incorporated by reference herein.

Respectfully submitted,

Dated: November 7, 2011

/s/ Kevin Batik
Ronald Crouch
Pa. Id. No. 35155
Kevin Batik (admitted pro hac vice)
Pa. Id. No. 89209
McGuireWoods LLP
625 Liberty Avenue, 23rd Floor
Pittsburgh, PA 15222
(412) 667-6000

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the concurrence in the motion has been sought from each party. Counsel for the Plaintiff does not concur with the relief sought in the motion.

/s/ Kevin Batik

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following via notice delivered by the Court's ECF filing system, on the 7th day of November 2011:

Vicki Piontek, Esq.
951 Allentown Road
Lansdale, PA 19446

/s/ Kevin Batik